



May 23, 2002

Mr. Steven D. Monté  
Assistant City Attorney  
Criminal Law & Police Division  
City of Dallas  
2014 Main, Room 501  
Dallas, Texas 75201

OR2002-2763

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163335.

The City of Dallas (the "city") received a written request for records of all police calls at a particular address within a certain time frame. You state that the city has released some responsive information to the requestor. You contend, however, that four responsive incident reports are excepted from required public disclosure pursuant to section 552.101 of the Government Code.

We note at the outset, and you acknowledge, that you did not make a timely request for a decision from this office. Section 552.301(a) of the Government Code requires a governmental body to request a decision from the attorney general within ten business days after receiving a request for information that the governmental body wishes to withhold, unless there has been a previous determination that the requested information is excepted from required public disclosure. You state that the department received the records request on February 28, 2002. However, you did not request a decision from this office until March 21, 2002. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). In this instance, because you contend that the requested information is made confidential by other law, we will consider your arguments for non-disclosure.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Incident Report Nos. 0836291-K and 1003799-K pertain to reports of alleged delinquent conduct. Section 58.007(c) of the Family Code provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

(1) kept separate from adult files and records; and

(2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Because Incident Report Nos. 0836291-K and 1003799-K come within the scope of section 58.007(c), we conclude that the city must withhold these reports in their entirety pursuant to section 552.101 of the Government Code.

Incident Report Nos. 0123815-L and 0088181-L pertain to allegations of child abuse. Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.*

Fam. Code § 261.201(a) (emphasis added). Consequently, Incident Report Nos. 0123815-L and 0088181-L are made confidential under section 261.201 of the Family Code. You have not informed this office of any rules the city has adopted that would permit access to these

two incident reports. Because these two incident reports pertain to investigations of an injury to a child, this office concludes that the city must withhold these two reports in their entirety pursuant to section 261.201 of the Family Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/RWP/sdk

Ref: ID# 163335

Enc: Submitted documents

c: Ms. Betty McCaleb  
Property Manager  
Northgate Village Apartments  
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(w/o enclosures)